

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 22-CR-20552-MD

UNITED STATES OF AMERICA,) VOLUME I OF I
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)
VS.) DATE OF PROCEEDINGS:
) OCTOBER 11, 2024
)
) COURTRoom NUMBER 12-4
DAVID RIVERA,) WILKIE D. FERGUSON, JR.
ESTHER NUHFER,) UNITED STATES
<u>DEFENDANTS.</u>) COURTHOUSE

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE MELISSA DAMIAN,
UNITED STATES DISTRICT JUDGE, AT
400 NORTH MIAMI AVENUE,
MIAMI, FLORIDA 33128.

APPEARANCES

FOR THE GOVERNMENT:	HAROLD E. SCHIMKAT, ESQ., DAN BERNSTEIN, ESQ. UNITED STATES ATTORNEY'S OFFICE 99 NE 4 STREET, 4TH FLOOR MIAMI, FLORIDA 33132
FOR THE DEFENDANT(S) :	EDWARD ROBERT SHOHAT, ESQ., DAVID WEINSTEIN, ESQ. JONES WALKER, LLP MIAMI CENTER 201 S. BISCAYNE BOULEVARD. SUITE 3000 MIAMI, FLORIDA 33131

Stenographically Reported By:

Quanincia S. Hill, RPR
Federal Official Court Reporter
400 North Miami Avenue
Miami, Florida 33128

FOR THE DEFENDANT(S) : DAVID OSCAR MARKUS, ESQ.,
ESTHER NUHFER ANITA MARGOT MOSS, ESQ.,
MELISSA MADRIGAL, ESQ.
MARKUS/MOSS, PLLC
40 NW THIRD STREET
PENTHOUSE ONE
MIAMI, FLORIDA 33131

Stenographically Reported By:

Quanincia S. Hill, RPR
Federal Official Court Reporter
400 North Miami Avenue
Miami, Florida 33128

1 (Proceedings commencing at 1:36 p.m.)

THE COURT: All right. Okay. So let's go ahead.

All right. Calling case number 22, criminal, 20552,

4 *Damian, United States of America versus David Rivera and Ester*
5 *Nuhfer.*

6 Counsel, please state your appearances, starting with
7 the Government.

8 **AUSA SCHIMKAT:** Good afternoon, Your Honor. Harry
9 Schimkat and Dan Bernstein for the United States.

10 **THE COURT:** Good morning. And on behalf of Defendant
11 Rivera.

12 **ATTORNEY SHOHAT:** Good afternoon, Your Honor. Ed
13 Shohat and David Weinstein, Jones, Walker, LLP, on behalf of
14 Mr. Rivera, who's is in court with us.

15 **THE COURT:** Thank you and good afternoon. And on
16 behalf of Ms. Nuhfer?

17 **ATTORNEY MARKUS:** Good afternoon. David Markus, Margo
18 Moss and Melissa Madrigal on behalf of Esther Nuhfer, who's
19 present in court.

20 **THE COURT:** Good afternoon to all of you. Everybody
21 can be seated.

22 All right. So we set this, if you recall, just to sort
23 of stay on top of progress in all of our scheduling. I wanted
24 to first check in with counsel for Mr. Rivera to see how you
25 are doing, if there's any issues, because I know we had you

1 enter a permanent appearance but with permission to withdraw,
2 despite the local rule, if that became necessary. How is that
3 going?

4 **ATTORNEY SHOHAT:** Your Honor, first of all, I want to
5 thank you for indulging us in the issue that we've been dealing
6 with for quite some time and giving us the opportunity to
7 withdraw. But I can advise the Court now that we have no
8 intention of withdrawing from the case.

9 **THE COURT:** Okay. Great. And somebody had -- somebody
10 was trying to sell a house in New Smyrna Beach, which I think
11 got a little slammed. So hopefully that is okay. I that
12 that's what I was hearing on the news.

13 Okay. So thank you for letting us know that.

14 And then Mr. Schimkat or Mr. Bernstein, how are we
15 doing on discovery?

16 **AUSA SCHIMKAT:** It has been moving along, Your Honor.
17 At the arraignment, we had turned over discovery to the
18 defendants, approximately 40 gigabytes of information that
19 contained what we thought was the main portion of the
20 government's discovery in the case, literally thousands of
21 e-mails and text messages that we had identified as the key
22 evidence in the case, as well as a large number of financial
23 and other business records all pertinent to this matter.

24 Since then, we have primarily focussed on getting
25 copies to the defendants of a rather large amount of electronic

1 evidence that had been gathered during the course of the
2 investigation, consisting largely of search warrants for
3 various e-mail accounts of both Mr. Rivera and various third
4 parties.

5 In gathering that evidence during the course of the
6 investigation, that evidence had gone through a filter review
7 process, to segregate out any potentially privileged
8 information that had been picked up in those search warrants to
9 the e-mail providers as well as from Mr. Rivera's iPhone.

10 So in the production, what we have done is that
11 information was all loaded into a litigation support service
12 into a Relativity database to make it more searchable. We have
13 had exports of that data from our Relativity provider exported
14 to our office so that we could provide it to the defendants on
15 hard drives so that they can also review it electronically
16 after loading it into a database such as Relativity. And
17 that's been a two-part process.

18 So what we have done is, first, we had to get exports
19 of these various search warrants for the information that's
20 been available to the case team, in other words, to myself and
21 Mr. Bernstein and the agents. I have received from the
22 defendants today, and I'm expecting to get a hard drive shortly
23 from Mr. Markus early next week. We will now load that
24 material on to the hard drives and then provide it to the
25 defendants so that they can undertake their own review. That

1 will consist of the documents and the materials that we had
2 already turned over back on August 30th that we had identified
3 as relevant to the case as well as all the other e-mails and
4 other items picked up in those search warrants so that they can
5 undertake a review for material that they believe might be
6 exculpatory to the defense.

7 So we're basically giving them everything available to
8 us from those various search warrants so they can see what we
9 have designated as relevant as well as have access to all the
10 other things in those e-mails accounts in order that they can
11 take their own review for what they think might be exculpatory.
12 I mean, obviously, at this point, they have not told us what
13 their defense is. It's sort of impractical for us to do a
14 review for exculpatory information flying in the blind. I may
15 have some idea what Mr. Rivera's defense is. But in an
16 abundance of caution, we're basically giving them the entirety
17 of those e-mail accounts so that they can look for it
18 themselves. That production, which should be go out to the
19 defendants next week, will be about 200 gigabytes of additional
20 material. Again, they can load it into Relativity or another
21 searchable database to undertake their review running search
22 terms and whatnot for any sort of exculpatory information they
23 may have.

24 In parallel to that, a filter attorney from our office
25 has also engaged in discovery with the defendants. I'm not as

1 involved in that for obvious reasons, but I know that the
2 filter attorney has reached out defense counsel. I believe he
3 has already provided defense counsel with material that had
4 been withheld from the case team that is potentially
5 privileged, and to ask the defendants to take a position on
6 whether or not those materials are in fact privileged or not.

7 I don't know the current status of that. I believe
8 that had been undertaken a little while ago. But I don't know
9 where it stands as far as, for instance, the defendants
10 preparing a privileged log as to which items they're going to
11 assert privilege to or whatnot. And I believe there might be
12 additional materials coming. But again, I'm not looped into
13 the day to day of those discussions between the filter attorney
14 and defense counsel. But that, again, would be a production
15 just on the filter side of the materials from those various
16 search warrants I've mentioned.

17 That has been a large task for the Government to
18 undertake, but I think we're in a position now where that will
19 largely be complete next week. There is some additional
20 discovery I still need to get out to them. And directly from
21 the case side of the team, that's going to be a relatively
22 small amount discovery -- of discovery compared to what we've
23 already produced.

24 And now that my portion of that e-litigation-type
25 discovery is done, I can turn to that and get that done

1 hopefully within the next week or two. And that will largely
2 be the discovery that is being turned over from the case --
3 from the case team side of things.

4 **THE COURT:** Okay. So in a nutshell, the massive
5 majority should all be to them in the next couple weeks.

6 **AUSA SCHIMKAT:** Correct.

7 **THE COURT:** And the privilege filter is on going. And
8 you just have a little bit more that will also flow after that.

9 **AUSA SCHIMKAT:** Correct, Your Honor.

10 **THE COURT:** And they know where those other things are
11 coming from --

12 **AUSA SCHIMKAT:** Yes, correct.

13 **THE COURT:** -- that's still missing?

14 All right. Okay. So let me hear from the defense
15 about discovery from your perspective.

16 **ATTORNEY SHOHAT:** May I approach the podium, Judge?

17 **THE COURT:** Sure.

18 **ATTORNEY SHOHAT:** Thank you, Your Honor.

19 As you can hear, there isn't a very large of amount of
20 discovery, 240 gigs for starters. Thousands and thousands of
21 e-mails and text messages. The process of reviewing those
22 individually is an extraordinarily lengthily and time-consuming
23 process. But Your Honor set the hearing to address scheduling
24 issues. And that's what I want to do.

25 We are getting up to speed as fast as we can on the